199

SUPREME COURT OF THE UNITED STATES.

No. 224.

THE UNITED STATES, APP'TS,

vs.

FREDERICK BILLINGS, JAMES R. BOLTON, AND HENRY W. HALLECK, ASSIGNEES OF BEZAR SIMMONS, AND ORRIN SIMMONS AND OTHERS, HEIRS-AT-LAW OF BEZAR SIMMONS, DECEASED.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

"Island at the port of San Diego."

INDEX.

	Original.	Print.
Proceedings of board of commissioners	1	1
Petition	7	2
Deposition of S. Arguello	9	3
" T. D. Johns	10	4
" F. Billings	12	5
Stipulation	15	5
Espediente	17	6
Map	19	7
Translation	24	8
"I. W., No. 1."	28	10
Translation of title	34	12
Translation of conveyance	36	13
Assignment	40	15
Opinion	46	17
Decree	47	18
Certificate	50	19
Appeal	51	19

	Original.	Print
Petition	55	20
Summons	57	21
Answer	59	22
Deposition of C. R. Johnson	65	23
Decree	69	25
Appeal	72	26
Clerk's certificate	73	26

FREDERICK BILLINGS *et al.*, assignees of Bezar Simmons, claimants, *vs* THE UNITED STATES, defendant. } For the place named "Island or Peninsular of the port of San Diego."

2

3 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

Be it remembered that on this twentieth day of April, anno Domini one thousand eight hundred and fifty-two, before the comissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Frederick Billings *et al.*, assignees of Bezar Simmons, for the place named "Island or Peninsular at the port of San Diego," was presented and ordered to be filed and docketed with No. 188, and is as follows, to wit:

(*Vide* page 3 of this transcript)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

LOS ANGELES, *October* 8*th*, 1852.

In case No. 188, Frederick Billings *et al.*, assignees of Bezar Simmons, for the place known as the island or peninsular, at the rort of San Diego, the deposition of Santiago Arguello, a witness in behalf of the claimants, taken before Commissioner James Wilson, with document marked I. W., No. 1, annexed thereto, was filed.

(*Vide* page 5 of this transcript.)

SAN FRANCISCO, *September* 23, 1853.

Case No. 188 called; on motion of the counsel for the claimant ordered to the foot of the docket.

4 SAN FRANCISCO, *September* 19*th*, 1854.

Case No. 188, on motion of the counsel for the claimant, with the consent of the U. S. law agent, was ordered to be placed at the foot of the 2d class cases on the trial docket.

SAN FRANCISCO, *October* 18, 1854.

In the same case, the deposition of Thomas D. Johns, a witness in behalf of the claimants, taken before Commissioner Peter Lott, was filed.

(*Vide* page 6 of this transcript.)

SAN FRANCISCO, *October* 24, 1854.

Case No. 188 was submitted without argument.

In the same case, the deposition of Frederick Billings, a witness in behalf of the claimant, taken before Commissioner Alpheus Felch, was filed.

(*Vide* page 8 of this transcript.)

In the same case, the counsel for the claimants filed the following stipulation, to wit:

(*Vide* page 11 of this transcript.)

In the same case, the counsel for the claimant filed the following motion, to wit:

(*Vide* page 11 of this transcript.)

Which, having been considered, was granted, and ordered that the petition be amended in accordance therewith.

SAN FRANCISCO, *October* 31*st*, 1854.

In the same case, Commissioner S. B. Farwell delivered the opinion of the board rejecting the claim.

(*Vide* page 39 of this transcript.)

5 And the following order was made, to wit:

(*Vide* page 41 of this transcript.)

6

7 *Petition.*

To the honorable commissioners to settle private land claims in California:

The petitioners, Frederick Billings, James R. Bolton, and Henry W. Halleck, assignees of Bezar Simmons, respectfully show:

That on the 15th day of May, A. D. 1846, Pio Pico, governor of California, by virtue of authority in him vested, granted to Pedro C. Carrillo the island or peninsular of San Diego, situate in the present county of San Diego, containing 2 square leagues, with the boundaries described in the grant, a copy of which is submitted herewith, marked "A," with a translation marked "B."

That on the 20th day of October, 1846, the said Pedro C. Carrillo sold and conveyed the said tract of land to the said Bezar Simmons, a copy of which conveyance is submitted herewith, marked "C," with a translation marked "D."

That on the 3d day of September, A. D. 1850, the said Bezar Simmons, by deed of assignment, conveyed the said tract of land to the petitioners, a copy of which deed of assignment is submitted herewith, marked "E."

And the petitioners further show, that the said land has not been surveyed by the surveyor general of the United States, such survey from the nature of the case being unnecessary—the boundaries being natural, and not to be mistaken.

That since the year 1846, the said Pedro C. Carrillo, Bezar Simmons, and the petitioners, have been, and the petitioners now are, in the quiet, peaceful, and undisturbed possessors of the said tract of land.

8 That they know of no conflicting claim.

That they rely for confirmation of title upon the original papers, copies of which are submitted herewith, upon the records and minutes in the archives now under the charge of the surveyor general, and upon such other and further proof as they may be advised as necessary.

Wherefore the pray the commissioners to confirm to them the said tract of land.

By their Att'ys, HALLECK, PEACHY, & BILLINGS.

Filed in office April 20th, 1852.

GEO. FISHER, *Sec'y.*

9 No. 188.

Deputation of S. Arguello.

OFFICE OF THE U. S. LAND COMMISSIONERS,
Los Angeles, Oct. 8th, 1852.

On this day, before James Wilson, one of the commissioners for ascertaining and settling private land claims in California, came S. Arguello, a witness produced in behalf of the claimants, Maria Antonio de la Guerra y Lataillade, whose petition in No. 188 on the docket of the board, and was duly sworn. His evidence being given in Spanish, was interpreted by the secretary.

The law agent of the United States was present by R. Greenhow, esq., and did not object.

1st question. What is your name, age, and place of residence?

Answer. My name is Santiago Arguello; my age is sixty years; and I reside near the port of San Diego, and have lived in California all my life.

2d question. Examine the document before you, marked I. W., No. 1, and say whether you are acquainted with the signatures, and if the document is genuine.

Answer. I have examined the document, and am acquainted with the signatures of Pio Pico, José Matias Moreno, José R. Arguello, Pedro C. Carrillo, H. D. Fitch, Santiago E. Arguello, Miguel Pedrorena, and José F. Snooks; their signatures to the document are genuine, and the document itself, to the best of my knowledge and belief, is also genuine.

S. ARGUELLO.

Subscribed to and sworn before me Oct. 8th, 1852.

JAMES WILSON, *Commissioner.*

10 Filed in office Oct. 8th, 1852.

GEO. FISHER, *Sec'y.*

188.—C.

Deposition of Thomas D. Johns.

UNITED STATES OF AMERICA,
State of California, ss:

SAN FRANCISCO, *Oct. 18th*, 1854.

This day came before Peter Lott, commissioner for taking testimony to be used before the board of U. S. land commissioners in said State, Thomas D. Jones, a witness on behalf of the claimants, Frederick Billings *et al.*, in case No. 188 on the docket of said board, and said witness being sworn, deposed as follows:

The U. S. associate law agent is present.

Questions by Capt. Halleck for claimant.

1st question. What is your name, age, and place of residence?

Answer. My name is Thomas D. Johns; my age, 29 years; and my residence, San Francisco, California.

2d question. Do you know the place called island or peninsular of San Diego? If yea, where is it situated, and what are its boundaries?

Answer. I know the place mentioned. It is a peninsula, bounded on the south by the Pacific ocean, on the north and west by the
11 bay of San Diego, and on the east by the main land. The boundary line on the east is marked by a sandy beach, a scant half mile wide—a low neck of land which separates said peninsular from the land.

3d question. Do you know of any improvement made on this land? If yea, what are they, and by whom made?

Answer. I know of three houses having been built on different points of the island, in the summer or fall of 1850, by the agent of William H. Aspinwall.

Cross-examined by U. S. associate law agent.

1st question. How much land is embraced in said peninsular?

Answer. I suppose there are about 1,000 acres altogether.

2d question. What was the name of that agent, and what was the object of building those houses?

Answer. His name is Charles R. Johnson, and the houses were built to keep possession and keep of squatters.

3d question. How long is said peninsular?

Answer. It is about 8 miles long.

4th question. How do you know said Johnson was Aspinwall's agent?

Answer. He told me he built those houses under orders from Mr. Robinson, of this place, who is Aspinwall's agent here. He (John-
son) was also agent for the Pacific Mail Steamship Company
12 at San Diego.

THOMAS D. JOHNS.

Subscribed and sworn to before me on this 18th day of October, A. D. 1854. PETER LOTT, *Com'r, &c.*

Filed in office Oct. 19th, 1854.

GEO. FISHER, *Sec'y.*

Deposition of Frederick Billings.

UNITED STATES LAND COMMISSION,
San Francisco, Oct. 24th, 1854.

On this day, before commissioner Alpheus Felch, came Frederick Billings, a witness on behalf of the claimants, Frederick Billings *et al.*, case No. 188, who, after being duly sworn, deposed as follows:

1st question. What is your name, age, and place of residence?

Answer. My name is Frederick Billings; my age, thirty-one years; residence, San Francisco, in California

2d question. Did you ever know Bezar Simmons? And if yea, is he living? And if not, when did he die, and who were his heirs?

Answer. Bezar Simmons was my brother-in-law. We came to California together; knew him most intimately. He died on the
13 25th or 26th day of September, A. D. 1850, in San Francisco. His wife died before him, and they had no children. His father and mother are both dead. They formerly lived at Woodstock, Vermont. His heirs are his brothers and sisters, and their names are, Orrin Simmons, Henry Simmons, Nathan P. Simmons, Benjamin F. Simmons, Priscilla Simmons, Ann F. Ryder, and Agusta S. Bartholomew. I know them all personally, except the latter—her I only know through information derived from the others. One sister, Polly, is dead. She died a widow, and left one child. I think the name of her husband was McCall, but the christened name of the child I do not recollect.

FREDERICK BILLINGS.

Subscribed and sworn to before me this 24th day of October, 1854.
ALPHEUS FELCH, *Commissioner.*

Filed in office Oct. 24th, 1854.

14 GEO. FISHER, *Sec'y.*

15 No. 188.

Stipulation.

In the claim of assignees, &c., of Bezar Simmons for "Isla de San Diego."

It is hereby agreed by the assistant law agent on the part of the United States that the counsel for the claimants have leave to withdraw the original deed of assignment of Bezar Simmons to F. Billings, J. R. Bolton, and H. W. Halleck, submitted as evidence on the trial of this case, and that the copy marked "E" and filed in this case, and marked "E," shall be deemed and considered as of the same force and effect as the original of which it purports to be a copy.

LOUIS BLANDING,
U. S. Law Asso. Agent.

Filed in office Oct. 24th, 1854.

GEO. FISHER, *Sec'y.*

No. 188.

Motion to amend petition.

Before the U. S. Commissioners to ascertain and settle private claims in California, in the claim of Bezar Simmons, assignee, &c., to "Isla de San Diego," moved that the petition in this case be amended by inserting the names of Orrin Simmons, Henry Simmons, Nathan P. Simmons Benjamin F. Simmons, Priscilla Simmons, Ann S. Ryder, and Agusta S. S. Bartholomew, heirs-at-law of Bezar Simmons, deceased.

16 HALLECK, PEACHY & BILLINGS,
Att'ys for Claimants.

Filed in office Oct. 24, 1854.

GEO. FISHER, *Sec'y.*

17 1846.

2.—S. D. K.

Espediente promovido por el ciudadano Pedro C. Carrillo lu pretencion del terreno llamado, isla o peninsular situado enel Puerte de San Diego, Compuesta de los cientos de Ganado Mayor.

No. 554.—*Aud de* 1848.

Espediente promovido poriel C. Pedro C. Carillo en solicitud del paraje de isla peninsular en la jurisdiccion de San Diego.

18 3. S. D. K.

San Diego, Ab'l 21 de 1844.

Servase informar el jues segundo de esta poblacion acerca de la solicitud quehace Don Pedro C. Carrillo si el paraje que pretende esta valdio ò corresponde á particular, corporacion en lu su cuado que sea vuelba el espedte à esta subprefectura para los demas fines.

ARGUELLO.

Sor. sub-prefecto del partido de San Diégo:

Pedro C. Carrillo natural de este Departamental de California y aveiucdada en este Ruerto Ante V. Con el debido respeto y conforme à derecho se presenta y dice. Que careciendo de un terreno propio para la crid de ganado mayor y menor y caballada y desesso de fomentar estos intereses cito un terreno valdio en los limites de este puerto por la parte del sur conocido con el nombre de la isla o peninsular que forma el puerto de San Diego el cual contiene pocomas o menos dos leguas ò sitios segun deseño que a compaiño. siendo dicho terreno propir para em potrero. Con cuyo fin lo pide y linda al norte con el estero de dicho puerto al oriente con la punta de San Augustin Melijo, al sur con el mar y al poniente con la Bahia fond cadero de los Buques y suplico à V. que previos los informes que tenga à bien tomarse sirva concedermelo pasando el espediente al Ex'mo fr Gobernador del Departamiente para q'l se sirva mandar q'l se me estienda el correspond'te titulo de propiedad. Por lo tanto A. V. pido y suplico se sirve provecr del

T. 50 K

Diseño de la Isla ó Peninsula
que pretende el Ciudadano Pedro de Carrillo

N.º 8294. Ac.d. nº 8 dimanante
fol. 19

No 225- U. Co vs Russell. page 35 -

S. 750 by 600 v- 86¾ acres-
W. claim S of Stream 40 acres & 65/100

N.W. N.E. S. E.

N.1 N.2 N.3 N.4 N.5 N.6 N.7 N.8 N.9 N.10 N.11 N.12 N.13 N.14 N.15 N.16 N.17

N. 8° E. 8¾ — 10½ ch — N. 22½ W. — E. 3/10 — N. 29 W. — 600 yds

Field Notes of this Survey
Commencing at a Stake near a small Creek
At No 1 Running S. 18° 45' E. 302 yds. to
No 2. Thence S. 16° 45' E. 606 yds. to No 3 Thence
N. 69 15' W. 74 yds to No 4. Thence N. 74° W. 136 yds.
to No 5- Thence N. 68° 30' W. 146 yds to No 6-
Thence N. 75° W. 275 yds. to No 7- Thence
N. 29° W. 184 yds. to No 8- Thence N. 22° W.
222 yds. to No 9- Thence N. 8° E. 183 yds.
to No 10- Thence North 207 yds. to
No 11 at the Creek Thence S. 72½ E. 74 yds. to
No 12- Thence S. 60 E. 44 yds. to No 13 Thence
S. 73° 45' E. 102 yds to No 14- Thence S. 41° 45' E.
30 yds. to No 15- Thence S. 80° E. 47 yds. to
No 16- Thence S. 76° 30' E. 44 yds to No 17 at
the Hill - Thence S. 88° 45' E. 242 yds. to
No 1. the place of beginning - Containing
114 87/100

Mile Post No 14
Road to Soquel Landing
11 ch
Road

747

Thomas Russell
Lands in
Sta Cruz County

K

Map of
Harahan's Lands-

Annexed to deposition of
H. R. Snyder July 23rd 1855-

Filed in Office April 28th 1855-

Geo. Fisher

This Map was presented this day April 28th 1855. and to the best of my knowledge the plat of the survey was made by me H. R. Snyder.

No 225. U. S. vs Russell. Page 44

747

Thomas Russell
Lands in
Sta Cruz County

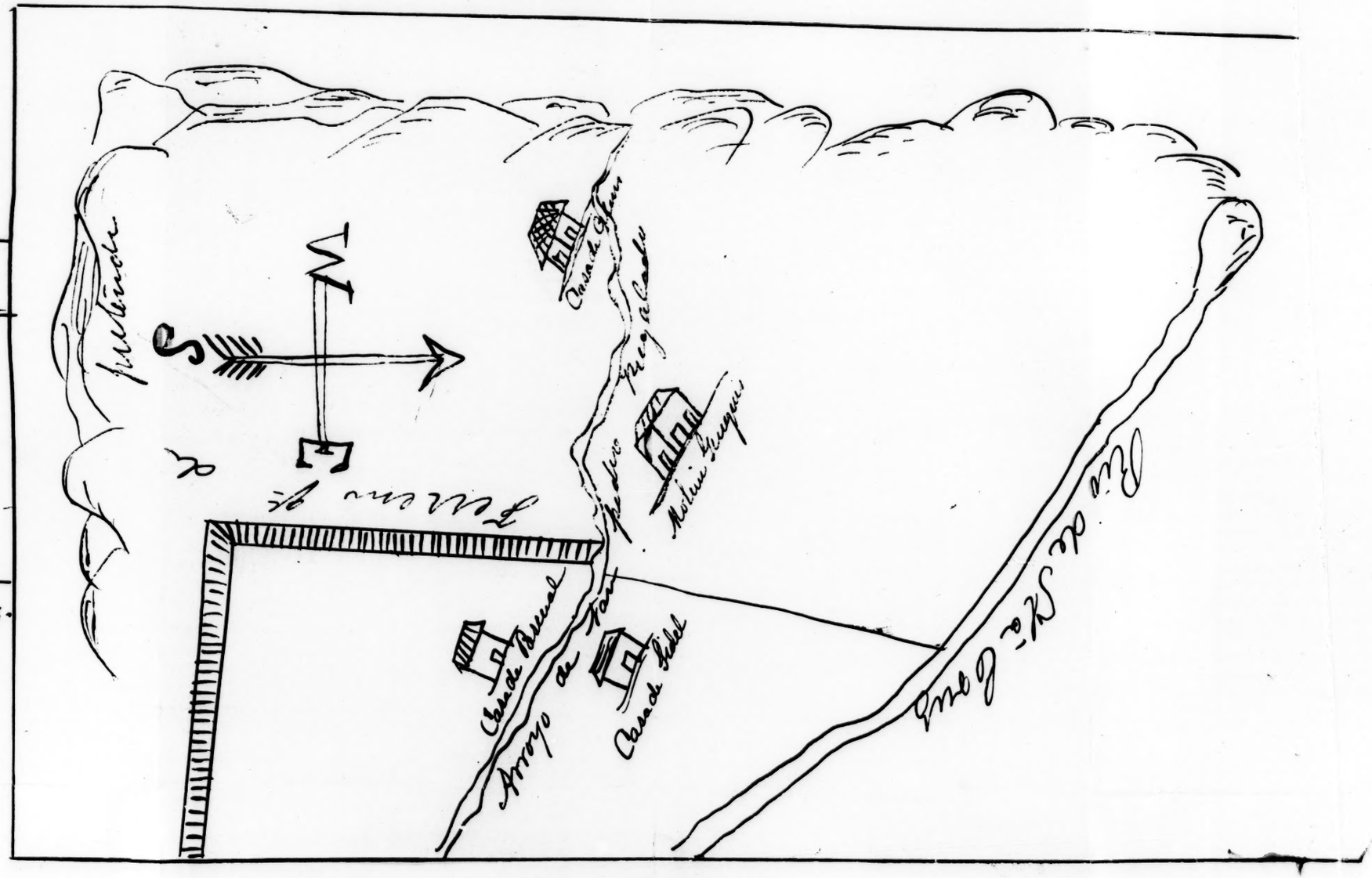
H -

Map of
Larahams Landt -

Filed in office April 28. 1853.

Geo. Fisher

Secy



modo y forma quel levo pedido en lo cual recivire gracia y merced furando no ser de malicià y lo necessario admitièn dome esta en papel comieun por falta del sellado.

San Diego, Abril 21 de 1846.

PEDRO C. CARRILLO.

SN. DIEGO, 20 de Abril, 1846.

El parage que solicita el ciudadano Pedro Carrillo se halla enteram'te valdio y no pertenese á propiedad alguna y de consig'te puede consederle.

JUAN MARIA OSUÑA.

5.—S. D. K.

EX'MO SOR.—En la informes pedidos con respeto al paragé de la isla ó peninsular que solicita el C'no Pedro Carrillo resulta ser enteramente valdio sin que de su consecion resulta en perjuicio de C'o portante pa. la superioridad lo tiene á bien podra adjudicar se lo al solicitente por carecer de terreno propio y concurrir en su persona la requisitos de colonizacion.

San Diego, Abril 21 de 1846.

JOSÉ R. ARGUELLO.

6.—S. D. K.

ANGELES, Mayo 15, de 1846.

Vista la solicitud con que da principio este expediente los informes necessarios con todo lo demas que se tovo presente y ver convino de conformidad con ley le de 18 de Agosto de 1824, reglamento de 21 de Novembre de 1828, declara á Dn. Pedro Carrillo dueno en propiedad del terreno conocido ô nombrado isla ô peninsular en el puerto de Sn. Diego, hacir á la parte del este, del fundadero, Li-
21 brese el titulo correspondiente y reservese el espediente para someterlo á la ex'mo asamblea departmental.

Pio Pico gobernador constitucional de Californias asi lo mando, decrecto y firme, doy fee.

PIO PICO.
JOSÉ MATIAS MORENO, *Srio.*

7.—S. D. K.

(Here follows a map marked original, page 19.)

22 8.—S. D. K.

Pio Pico, gobernador constitucional del departamento de Californias:

Por cuanto D'n Pedro Casarino Carrillo ha pretendido para sa beneficio personel y el de su familia el terreno conocido con el nombre de isla ó peninsula en el puerto del S'n Diego practicadas preveamente los averiguaciones consernientes, usando de las facultades qol. me son conferidas á nombre de la nacion Mejicana he venido por decreto de este dia en concederle el espresado terreno, declarandole la propiedad de el

por las presentes letras de conformidad con la ley de 18 de Agosto de 1824 y reglamentos de 21 de Nov. de 1828, á reserva de la aperbacion de la E. A. D. y bajo las condiciones siguientes.

1o. Podra circarlo sin perjudicar las traversias caminos y servidumbres; lo des frutara libre y esclusivamente destinandolo al uso ó cultivo que mas le acomodo.

2o. Solicitara del juez respectivo que le de la posecion juridica en virtud de este despacho por el cual se demarcaran los linderos.

3o. El terreno de que se le hace donacion es de dos sitios de ganado mayor y linda al H con el esten del puerto de San Diego hacia la poblacion, al O. con la punta del rancho de San Agusten Melijo, al o con el mar y el pomente con la Bahia. ó fondeddero de los buques segun esplica el desend que obra en el esped'te. El juez que le dé posecion le hava medio confirme à ordenanza.

En consecuencia mando que teniendose el presente titulo por firme y valedero se tomo razon de el en el libro a que corresponde y se entregue al interesado para su resguardo y demas fines. Dado
23 en la ciudad de los Angeles, en este papel comun por falta de sellado à 15 de Mayo de 1846.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, surveyor general of the United States for the State of California, and as such now having in my office, and under my charge and control, a portion of the archives of the former Spanish and Mexican territory or department of Upper California, do hereby certify that the nine preceding and annexed pages of tracing paper, numbered from one to nine inclusive, and each of which is verified by my initials, (S. D K.,) exhibit true and accurate copies of certain documents on file, and forming part of the said archives, in this office.

In testimony whereof, I have hereunto signed my name officially, and affixed my private seal, (not having a seal of office,) at the city of San Francisco, California, this 29th day of April, 1852.

[SEAL.]

SAMUEL D. KING,
Surv'y Gen'l Cal'a.

Filed in office Sept. 22nd, 1852.

GEO. FISHER, *Sec'y.*

24 *Translation of espediente.*

SAN DIEGO, *April* 21, 1846.

The 2d magistrate of this town will be pleased to inform relative to the petition made by Don Pedro C. Carrillo, of the place he petitions for is vacant, or if it belongs to any individual, corporation, and this being complied with, he will return the espediente to this sub-prefecture for the other purpose.

ARGUELLO.

Segun, sub-prefect of the partido of San Diego:

Pedro C. Carrillo, native of this department of California and resident in this port, before you with due respect and in conformity with law, appears and says that, being in want of the proper land for the breeding of cattle—both large and small, and desirous of incouraging these kinds of property, he names a vacant land in the limits of this port, in the

southern part, known by the name of "La Ysla," or peninsular, which the port of San Diego forms, the which contains, a little more or less, two leagues or sitios, according to the map which he transmits, said land being fit for a cattle farm, for which purpose he asks for it; and is bounded on the north by the "estero," (creek,) of said port; east by the place of Don Augustin Melijo; south by the sea; and west by the bay and ship anchorage; and he prays you that after the informations which you may think proper to take, you will be pleased to grant it to him, passing the espediente to his excellency the governor of the department, that he may have the goodness to order the corresponding title of ownership to be issued to him.

Wherefore I pray and beseech you to be pleased to provide
25 in the manner and form which I will receive grace and favor, swearing not to act from malice, and whatever else may be necessary. Admitting this on common paper for want of stamped.

San Diego, April 21st, 1846.

(Signed) PEDRO C. CARRILLO.

SAN DIEGO, *April* 21*st*, 1846.

The place which citizen Pedro C Carrillo asks for is at present entirely vacant, and does not belong to any ownership, and consequently may be granted to him.

(Signed) JUAN MARIA OSUNA.

MOST EXCELLENT SIR: From the information asked with respect to the place of La Ysla, or peninsula, which citizen Pedro C. Carrillo, it results that it is entirely vacant, so that its being granted would cause no injury to a third person; wherefore if the superior authority thinks proper, it can grant it to the petitioner, as he is without any land of his own, and combines in his person the requisites of colonization.

San Diego, April 21, 1846.

(Signed) JOSÉ R. ARGUELLO.

ANGELES, *May* 15*th*, 1836.

Having seen the petition with which this espediente commences, the necessary reports, with all other things which were repre-
26 sented and deemed proper to be seen, in conformity with the law of August 18th, 1824, and regulations of November 21st, 1828, I declare Don Pedro Carrillo owner in fee of the land known or named isla, or peninsular in the port of San Diego, towards the port of of the anchorage.

Let the corresponding title be issued, and reserve the espediente in order to submit it to the approval of the most excellent departmental assembly.

Pio Pico, constitutional governor of California, thus ordered, decreed, and signed, I certify.

(Signed) PIO PICO.

(Sg'd) JOSÉ MATIAS MORENO,
Secretary.

(For translation of title see Exhibit " ")

Filed in office Sept. 22d, 1852.

GEO. FISHER, *Sec'y.*

27

28 *Doc marked J. W. 1, No. 1, annexed to the deposition of S. Arguello.*

Pio Pico, gobernador constitucional del departamento de Californias:

[SELLO.] Por Cuanto Don Pedro Carrillo ha pretendido para subeneficiu personal yel de sa famioia el terreno conocido con el nombre de isla ó peninsula en el puerto de San Diego, practicadas previamente las avereguaciones concernientes, usando de las facultades que meson conferidas á nombre de la nacion Mejicana he venido por decreto deeste dia en consederle el espreado terreno declarandole la propiedad ded porlas presentes letras de conformidad con las leyes de 18 de Aogost de 1824, y reglamento de 21 de Nov'bre, 1828, á reserva de la aprobacion de la ex'ma asamblea departamental y baso las condiciones segt's.

1a. Podra ecrearla sin perjudicar las travecias caminos y servidumbres, lo disputara libre y esclusivamente deutinoandole aluso y cultivo que mas le acomodo.

2o. Solicitara del juez respectivo le de la posecion juridica en virtud de este despacho por el cual se demarcaran los linderos.

3o. El terreno de que se he hace donacion es de dos citios de ganado mayor y linda al norte con el estero del puerto de San Diego hacia la poblacion al oriente cou la punta del rancho de San Augustin Melijo, al sur con el mar y al poniente con la Bohia ò fundeadero de los buques segun esplica el diceño que abra en el espediente. El juez que le de posesion lo hara medir con forme à ordenanza.

29 En consecuencia mando que teniendose el presente titulo por firme y valedero se tome razon de el en el libro á que corresponde y se entreque al interesado para su resguardo y demas fines.

Dado en la ciudad de los Angeles, en este papel commua pora falta de sellado á 15 de Marzo de 1846.

PIO PICO.
JOSÉ MARTIAS MOREUO, *Srio.*

Queda tomado razon de este superior despacho en el libro respectvio.

MORENO.

Queda tomada razon de este despacho sup'or a p 5 vuelta del libro respectivo llebado en esta sub-prefecture de mi cargo.

JOSÉ R. ARGUELLO.

I. W., No. 1.—Continued.

En el pueblo de San Diego territorio de Californias à los veinte dias del mes de Octubre de mil ocho cientos cuarenta y seis ante mi el ciudadano Enrique Domingo Fitch, alcalde segundo de este pueblo, y

su jurisdicion y por ante los testigos de mi asistencia con quienes actuo por receptoria à mas de los instrumentales que alfin se nominaron comparecio, D'n Pedro C. Carrillo vecino y residente en este pueblo á quién doy feé conoseo y dige. Que con conocien'to de su espore y en virtud de haber celebrado un contrato con el capitan de la fragata Norte Americana, Magnolia, Don Bezar Simmons cuidadano de los Estados Unidos del Norte, su residencia en el estado de Vermont el dia veinte del presente mes y año quien tambien estubo presente suque se vendio toda el terreno de su propiedad de la isla ò peninsula que forma el puerto de San Diego hasta colindar con los terrenos de Don Santiago Emigdio Arguello: cuyo terreno es de dos citios de ganado mayor. Como lo acredita
30 el titulo espedido por el ex'mo s'or gobernador del departamento, Don Pio Pico en la cantidad de me mil pesos plata unico precio en que la estima sin que ninguna le haya ofrece denu ha encontrado quien le de mas y se mas vale lo sede y dona á favor del espresado S'or Bezar Simmons como de voluntad libre y espontama suya y de su repetida esposa, sin que posalo contrario se pueda proseder por ninguna ley ni titulo pues de todos que le favorescan renuncia y se obliga y compromete desde ahora por se y á nombre de sus herederos subsesores y de quien de ellos hubrere titulo voz y causa en cuales quiera mauera desde este momento sede traspasa y da en enageracion penpetua por piro de hereded para siempre jamas al referido Don Bezar Simmons y á los suyos el derecho de propiedad que tiene en el mencionada isla o peninsula entregando el Correspondiente titulo de fecha quince de mayo de mil ochocientos cuarenta y seis cuyo terreno declaro no tenerlo vendido enagluado ni empeñado y que esta libre de tributo memoria, cappellaria, vinculo, fianza y de otro gravamen real, perpetua, temporal especial general, tacito y espresa, y como tal selo cede y traspasa y que desde hoy en adelante para siempre se desapodera desiste quita y aparta á sus herederos y subsesores del dominio propiedad, titulo recurso y otro cualesquiesa derecho que le competa al repetido terreno de la peninsula le sede, renuncia, y traspasa con las acciones y personales mistas, directos y ejecutiras en el S'or Bezar Simmons y en quien su persona representa para que lo posee cambie engene, y disponga de ella á su eleccion como de cosa suya adquirida con legitimo y pesto titulo le con-
31 fiere poder irrevocable con libre franca y general administracion y se le constituya procurador actor en su propia causa para que de su autoridad ô judicialm'te entre y se apodere de la mencionada isla o peninsula y de ella tome y aprenda la real tenencia y posecion g'l por derecho le compete y para que lo necesite tomarlo pide se le de copia autorizada de la presente con la cual sue otra acto de aprencion ha de servisto haberlo tomado aprendido y trasferidole y en el interim se constituye su inquilino tenedor y precacio poseedor en legal forma y se obliga ha que la repetida isla ò peninsula será cierta y seguro y efectivo y nadie le inquietara ni movera pleito sobre la propiedad gose y disfrute ni contra ella parecerá gravamen al guno y si le inquietan moviere o apereciese luego que el otorgante o sus herederos y sucesores sean requiridos conforme á derecho valdran á la defenza en todas instancias y tribunales hasta ejecutoriales y

dejar al S'or Don Bezer Simmons y á los suyos en libre huso quieta y pacifica posesion y no pudiendo conseguirlo le daran otra ignal en valor y en su defecto restituyua su importe las mejores utiles precios y volentarios que á la gasontenga el mayor valor estimacion que con el tiempo adquira y de todas las costos gastos y menoscabos que se le siginerea corogacion por todo lo cual se ler hade poder ejecutarea virtud de esta escritura y puramento del que la posede o de quien le represente en quien defiere su importa y le releva de otra prueva y á la observancia de todo lo referido, obliga el otorgante su per-
32 sona bienes habidos por haber y conellos se somete y renuncia las leyes de su favor y defenza con la general del derecho en forma y confiere amplio poder á los señores Jueces que de este negocio puedan conoser para que lo compelan y apremien por vin ejecutiva á su cumplimiento como por sentencia pasada definitiva lu autoridad de cosa juszada consentida y sin otro recurso y que por tal la recibe y la firmo conmigo y los de mi asistencia siendo los instrumentales los cindadanos Miguel de Pedrorena, José Snooks, Thomas Russel.

H. D. FITCH.
PEDRO C. CARRILLO.

Assa: SANTIAGO E. ARGUELLO.
Assa: ALPH. ANZELINO
Instrumentales: MIGUEL DE PEDRORENA
Instrumentales: JOSÉ F. SNOOKS.
Instrumental: THOMAS RUSSELL.

MAGISTRATE'S OFFICE,
San Diego, April 20th, 1848.

This is to certify the within deed has been duly recorded in this office.

E. L. BROWN,
Alcalde S'n Diego.

Filed in office Octo. 8th, 1852.

GEO. FISHER, *Sec'y.*

33

34 *Translation of title B.*

Pio Pico, constitutional governor of the department of California:

[SEAL.] Whereas Don Pedro Carrillo has, for his personal benefit and that of his family, petitioned for the land known as the island or peninsular, in the port of San Diego, the proper examinations being previously made, using the faculties which are conferred on me in the name of the Mexican nation, I have granted him the aforesaid land in decree of this day, declaring to him the ownership of it by these presents in conformity with the law of August 18, 1824, and the regulation of Nov. 21, 1828, subject to the approval of the most excellent departmental assembly, and under the following conditions:

1st. He may enclose it without prejudice to the crossings, roads, and servitudes, and enjoy it freely and exclusively, making such use or cultivation of it as may best suit him.

2d. He shall request the proper magistrate to give him juridical possession in virtue of this order, by whom the boundaries will be marked out.

3d. The land of which donation is made is two square leagues, and is bounded on the north by the estero of the port of San Diego, towards the town; east by the end of the rancho of San Augustin Mellisis; south by the sea; and west by the bay or anchorage for ships, as explained by the map which goes with the espediente. The magistrate who may give the possession will cause it to be measured in conformity with the ordinance.

In consequence, I order that the present title being held as
35 firm and valid, note be made of it in the corresponding book, and it be delivered to the party interested for his security and other purposes.

Given in the city of Los Angeles, on this common paper, for want of stamped, on the 15th of May, 1846.

(Signed) PIO PICO.

(Signed) JOSÉ MATIAS MORENO,
Secretary.

Note has been made of this superior order in the proper book.

(Signed) MORENO.

Note has been made of this superior order on (page) 5, over in the proper book, in this sub-prefecture, in my charge.

(Signed) JOSÉ R. ARGUELLO.

Filed in office April 20th, 1852.

GEO. FISHER, *Sec'y.*

36 "*D.*"—*Translation of conveyance.*

In the town of San Diego, Territory of California, on the twentieth day of the month of October, eighteen hundred and forty-six, before me, Citizen Enrique Domingo Fitch, second alcalde of this town and its jurisdiction, and before the witnesses of my asistance, with whom I act in virtue of my office, besides the witnesses to the instrument, who will at the end be named, appear Don Pedro Carrillo, neighbor and resident of this town, whom I certify I know, and said, that with the knowledge of his wife, and in virtue of a contract entered into with the captain of the North American ship Magnolia, Don Bezar Simmons, citizen of the United States of the north, his residence in the State of Vermont, on the twentieth of the present month and year, who also was present; in which he sold all the land of his ownership in the island or peninsular, which is formed by the harbour of San Diego, until it touches the lands of Santiago Emigdir Arguello, which land contains two square leagues, as shown by the title issued by the excellency the governor of the department, Don Pio Pico, for his sum of one thousand dollars in cash, the only price at which it has

been valued, no person having offered him more and he not finding any person who would give him more; he cedes and makes donation of it in favor of the said Don Bezar Simmons, of his free and spontaneous will, and that of his said wife, so that the contrary cannot be maintained by any law or title, for he renounces all that can favor him and binds and comprises himself from this time, for himself and in the name of his heirs and successors and of whoever of them
37 may have title, voice, or claim in any manner; from this moment he conveys, transfers and gives in perpetual alienation, with the right of inheritance forever, to the said Don Bezar Simmons, and to his heirs, the right of ownership which he has in the said island or peninsular, delivering the corresponding title, dated the fifteenth day of May, one thousand eight hundred and forty-six, which land he declares has not been sold, alienated or pledged; and that this free from all tribute, religious or charitable tax, entail, pledge or other encumbrance, real, perpetual, special, general, tacit and expressed; and as such he cedes and transfers, and from this time forth forever dispossesses himself and desists from, takes away and seperates from his heirs and successors the dominion, ownership, title, voice, recourse, and every other right which he has in the said land of the peninsula; and cedes, renounces, and transfers them, with the actions real and personal, mixed, direct and effective, in Senor Bezar Simmons, and in whoever may represent his person, that he may possess, exchange, alienate, and dispose of it at his pleasure as of his own property, acquired with legal and just title; he confers on him irrevocable power, with free, full, and general administration, and constitutes him attorney in fact in his own cause, that either of his own authority or judicially, he may enter upon and possess himself of the said island or peninsula, and take and seize the real tenure and possession of it, which by law belongs to him; and that he may not need to take it, he prays that an authenticated copy of this present
38 be given him, by which, without any other act of taking, it will be seen that he has taken and seized it, and it has been transferred to him. And in the meantime he constitues himself his tenant and temporary possessor in legal form; and he binds himself that said island or peninsula shall be certain, sure and effective, and no person shall molest him or bring suit against his ownership, enjoyment, and benefit; neither shall any encumbrance appear against it; and if he should be molested, or suit brought, or an encumbrance appear, so soon as the grantor or his heirs and successors may be called upon in conformity with law, they will come forward in the defence in all courts and tribunals until they obtain judgment in his favor, and leave the said Don Bezar Simmons and his, in free use, quiet and peaceable possession; and not being able to obtain it, they shall give him another equal in value; and in want of such, he will restore its value, the improvements useful and necessary which at the time he may have, the greatest value and estimation which with time they may acquire, and all the costs, expenses, and damages which may follow or accrue to him; all which shall be executed upon them in virtue of this writing, and the oath of him who possesses it, or of whoever may represent him, to whom he leaves it to fix the amount,

and he relieves him from other proof. And for the observance of all the foregoing, the grantor binds his person, his property, which he now has or may hereafter obtain, and with it submits himself, and renounces the laws in his favor and defence, with the legal
39 exceptions in form ; and he confers ample power on the magistrates who of this matter ought to take cognizance, that they may force and compel him by the "via ejecutiva" to comply with it, as a definitive sentence passed in authority of res judicata, consented to, and without other recourse, and as such he receives it, and they signed it with me and those of my assistance. The witnesses to the instrument being Citizens Miguel de Pedrorena, José F. Snook, Thomas Russel.

(Signed) H. D. FITCH.
(Signed) PEDRO C. CARRILLO.

Ass'tg witnesses :

(Signed) SANTIAGO E. ARQUELLO.
(S'g'd) ALFA. AURELIN.

Witness to the instrument :

(Signed) MIGUEL D. PEDRORENO.
(S'g'd) JOSE F. SNOOK.
(S'g'd) THOMAS RUSSEL.

Filed in office April 20th, 1852.

GEO. FISHER, *Sec'y.*

40 *E.—Deed of assignment.*

This indenture made this third day of September, A. D. one thousand eight hundred and fifty, between Bezar Simmons, of San Francisco, in the State of California, party of the first part, and Frederick Billings, James R. Bolton, and H. W. Halleck, of said city, parties of the second part, witnesseth : that the said party of the first part, in consideration of the sum of one dollar to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, and for the further considerations herewith specified, hath given, granted, bargained and sold, and by these presents do give, grant, bargain and sell unto them, the said parties of the second part, all those lands, tenements and hereditaments lying and being in the State of California, which are more particularly specified and described in a schedule hereto annexed and made part hereof, marked schedule A, to have and to hold unto them, the said parties of the second part, their heirs and assigns forever, in trust, nevertheless, and to and for the following uses, interests and purposes, that is to say, that the said parties of the second part shall take possession of all and singular the said lands, tenements, and hereditaments hereby consigned or intended so to be, and sell and dispose of the same either at public or private sale to such person or persons for such prices and on such terms and conditions, and either for cash or upon credit, as in his judgment may appear best and most for the interest of the parties concerned, and convert the same into money, and thereupon to execute, acknowledge and deliver good and sufficient deeds and all instruments of

41 conveyance necessary to effect a sale and transfer of any and all the estates and property hereby conveyed or intended so to be; and by and with the proceeds of such sale the said parties of the second part shall first pay and disburse all the just, reasonable, and usual expenses, costs, charges and commissions of making, executing and carrying into full effect this assignment and the objects thereof, and the residue of the proceeds of such sales shall be considered as the nett avails or proceeds of the property hereby conveyed.

And, first, by and with the said nett proceeds the said parties of the second part shall pay and discharge in full all the debts, obligations and demands due or to become due by the party of the first part, or in anywise existing against him, together with all interest that may be due thereon at the time of payment; and,

Secondly, by and with the rest, residue and remainder of said nett proceeds, if any shall remain after the payment in full of said debts and private liabilities of the party of the first part, the said parties of the second part shall pay and discharge the partnership debts mentioned in the deed of assignment this day made by the said Bezar Simmons and William H. Stowell to the said parties of the second part, and hereby referred to, according to the order and arrangement established by the said deed for the payment of the debts therein mentioned or referred to, and the said party of the first part also assigns and conveys to the said parties of the second part all the goods, chattels, vessels, boats and personal property of every kind mentioned

42 in the said schedule A, hereto annexed, in trust for the uses and purposes herein set forth, as those to which the proceeds of the real estate above conveyed are to be devoted.

In testimony whereof the party of the first part doth hereunto set his hand and affixed his seal on the day and year first herein written.

(S'g'd) B. SIMMONS.

Signed and delivered in presence of—

(S'g'd) ARCH. C. PEACHY.

(S'g'd) C. TEMPLE EMMETT.

STATE OF CALIFORNIA,

County of San Francisco:

At San Francisco on this the third day of September, A. D. eighteen hundred and fifty, personally appeared before me, a notary public in and for said county, Bezar Simmons, well known to me to be the party described in and who executed the foregoing instrument, and acknowledged that he executed the same freely and voluntarily and for the purposes therein mentioned.

[SEAL.] In witness whereof I have hereunto set my hand and seal official the day and year above written.

(Signed) C. TEMPLE EMMET,

Notary Public.

43 *Schedule A.*

Schedule of property belonging to Bezar Simmons referred to in his deed of assignment:

The rancho known as Novate Rancho, in Marin county, purchased of Jacob P. Leese and Rosalie Vallejo, his wife, November 24, 1846, save a small portion heretofore conveyed to Benjamin Franklin Simmons, with the improvements and my stock thereon.

Seven-sixteenths of the peninsula forming one arm of the bay of San Diego, purchased of

The following property in the city of San Francisco: An undivided half of one hundred vara lot numbered eighty-eight; forty varas by fifty varas, of fifty vara lot numbered two hundred eighty-five; westerly half of fifty vara lot numbered two hundred and three; southern half of lot numbered thirty-eight, (fifty vara lot).

About one hundred and forty-five lots in Sacramento city, the exact number and locality of the same can be ascertained by the original deed of John A. Sutter to said Simmons, dated November 24th, A. D. 1849, and recorded in Sacramento, and certain deeds of some of the lots so conveyed by Sutter given by me to Betherd Phelps, Isaac T. Mott, Orrin Farnham, Franklin N. Billings, Mrs. Ann S. Ryder.

44 The following property in the city of Benicia, viz: The western half of lot one, (1,) in block fife, (5;) lot six, in block twenty-six; lot sixteen, in block forty-five; lots fourteen and sixteen, in block forty-seven; lot fourteen, in block forty-eight; lot six, in block fifty; lot sixteen, in block forty-one; lot sixteen, in block fifty-three.

One undivided fourth part of the ship Magnolia.

A note for two thousand dollars, signed by John F. Pope.

Recorded in co. recorder's office, Sept. 4th, 1850, 10 a. m., in book No. 1 of deeds of trust, page 29.

(Signed) JOHN A. McGLYNN,
County Recorder.
By JAS. A. GRADY,
Deputy.

Filed in office April 20th, 1852.

GEO. FISHER, *Sec'y.*

45

46 No. 188.

Opinion by Com. S. B. Farwell.

FREDERICK BILLINGS *et al.* *vs.* THE UNITED STATES. } Claim for the island or peninsula at San Diego, in the county of San Diego.

In this case the claimants have offered in evidence traced copies of the espediente and grant to Don Pedro Carrillo.

The grant was issued by Pio Pico, governor, and is dated the 15th day of May, 1846.

The claimants have also offered in evidence a deed of conveyance from the said Carrillo and his wife of the premises to Don Bezar Simmons, dated the 20th day of October, 1846.

Also a deed of assignment from the said Simmons to the said Billings and others, the present claimants, bearing date the 3d day of Sept., 1850.

The genuineness of all said documents is satisfactorily established by the proofs in the case.

The grant contains the usual conditions, and it now remains to be seen whether these conditions have been complied with. There is no evidence whatever that the original grantee ever done anything whatever in the line of improvements, or that he or any other person ever inhabited the same up to the day of his sale to the said Simmons; but it does appear from the evidence (documentary) that he sold the same before he had performed any of the conditions of inhabitancy or cultivation, in violation of the terms and conditions of the
47 grant. Thomas D Johns is the only witness in the case produced on the part of the claimants to prove the performance of the conditions of the grant. He testifies that he is acquainted with the premises in question, and that he knows that three houses were erected some time in the summer or fall of 1850, and that they were erected by the agent of William Aspinwall, in order to keep possession of the island, and keep off squatters.

It is the opinion of the board that the conditions of the grant, and the law under which the same was issued, have not been complied with, and that the claim is invalid, and that the same should be rejected, and a decree will be entered accordingly. Rejected.

Filed in office Octo. 31st, 1854.

GEO. FISHER,
Secretary.

Decree.

FREDERICK BILLINGS *et al.*
vs.
THE UNITED STATES.

After the hearing of the proofs and allegations in this case, it is adjudged and decreed by the board that the claim herein is invalid, and confirmation of the same is hereby refused.

ALPHEUS FELCH,
R. AUG. THOMPSON,
J. B. FARWELL,
Commissioners.

Filed in office Octo. 31st, 1854.

GEO. FISHER, *Sec'y.*

48 *Order.*

And it appearing to the satisfaction of this board that the land hereby adjudicated is situated in the southern district of California, it is hereby ordered that two transcripts of the proceedings, and of

the decision in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary; one of which transcripts shall be filed with the clerk of the United States district court for the southern district of Cal., and the other be transmitted to the attorney general of the U. S

49

50 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing forty-one pages, numbered from 1 to 44, both inclusive, to contain a true, correct, and full transcript of the records of the proceedings and of the decision of the said board of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 188 on the docket of the said board, wherein Frederick Billings *et al.*, assignees of Bezar Simmons, are the claimants against the United States for the place known by the name of "Island or Peninsula at the Port of San Diego."

In testimony whereof, I hereunto set my hand and affix my private seal, (not having a seal of office,) at San Erancisco, California, this twentieth day of June, A. D. 1855, and of the independence of the United States ofAmerica the seventy-ninth.

[SEAL.]

GEO. FISHER, *Sec'y.*

Filed July 2d, 1855.

C. E. CARR, *Cl'k*,
By A. H. CLARK, *Deputy.*

51 *Appeal.*

United States district court for the southern district of California.

B. SIMMONS'S ASSIGNEES, appellants,
vs.
THE UNITED STATES, appellees.

Notice of intention to prosecute the appeal from the decision of the board of U. S. land commissioners.

The above appellants, claimants of the land known as the "Isla de San Diego," situate in the southern district of California, hereby give notice of their intention to prosecute an appeal from the decision of the board of commissioners rendered in their claim for the said land, which was presented to the said board of commissioners and by them rejected; their claim being that which is numbered on the docket of said board of commissioners No. 188, the manuscript whereof as filed in this office is numbered.

HALLECK, PEACHY & BILLINGS,
Attorneys for Appellants.

Filed March 16th, 1855.

C. E. CARR, *Cl'k.*

52

53 *Appeal.*

In the district court of the United States for the southern district of California.

FRED. BILLINGS AND OTHERS, claimants,
vs.
THE UNITED STATES.

To the clerk of the said district court:

Notice is hereby given that, under the provisions of law, an appeal will be prosecuted by the said claimants from the decision of the board of United States land commissioners, by which they rejected the claim, numbered one hundred and eighty-eight (188) upon their docket, of the said Fred. Billings and others to the tract of land known by the name of San Diego island or peninsula.

E. STANLEY,
Att'y for Claimant

Filed July 2d, 1855.

C. E. CARR, *Cl'k*,
By A. H. CLARK, *Deputy.*

54

55 *Petition for review.*

In the district court of the United States for the southern district of California.

FREDERICK BILLINGS *et als.*, assignees of Bezar Simmons,
vs.
THE UNITED STATES.
No. 157.—Appeal by claimant.

To the honorable the judge of the United States district court for the southern district of California:

The petition of Frederick Billings, James R. Bolton, and Henry W. Halleck, assignees of Bezar Simmons and of Orrin Simmons, Henry Simmons, Nathan P. Simmons, Benjamin F. Simmons, Priscilla Simmons, Ann F. Ryder, and Augusta S. Bartholemew, heirs-at-law of Bezar Simmons, deceased, respectfully represents that, under the provisions of the act of Congress of 3d March, 1851, a petition was presented to the commissioners appointed under said act to examine claims to land in California, praying for the confirmation of the claim of petitioner to the tract of land known as the island or peninsula of the port of San Diego; that said petition was accompanied by evidence of the title of said Bezar Simmons and the other petitioners, to which, for more particular information, petitioners beg leave to refer; that the said claim was designated as No. 188 on the docket of said commissioners, and was rejected by them on the 31st of October, 1854;

56 that the said land is situated in the southern judicial district of California; that a transcript of the proceedings and decision of the commissioners was filed in the office of the clerk of the court for that district on the 2nd day of July, 1855, and that a notice of appeal in behalf of the claimants was filed with said clerk on the said 2nd day of July, 1855.

Your petitioners pray for a rehearing of the case upon the appeal that the said decision of the commissioners may be reversed and annulled, and that the court will make such decree and order as may be necessary and proper to confirm said claim to the premises mentioned and referred to in their said petition and evidences of claim. And your petitioners will ever pay, &c.

HALLECK, PEACHY & BILLINGS,
And STANLEY & KING,
Att'ys for Petitioner.

Los Angeles, Sept. 22nd, 1855.

Filed Sept. 22nd, 1855.

C. E. CARR, *Cl'k*,
By JOHN W. KUSS, *Dep.*

57 *Summons.*

UNITED STATES OF AMERICA,
Southern District of California, ss:

The President of the United States to P. Ord, U. S. dist. att'y for the southern district of California, greeting:

Take notice that a petition, a copy of which is herewith served upon you, has been filed against the United States in the district court of the United States in and for the southern district of California, on the 22d day of September, in the year of our Lord one thousand eight hundred and fifty-five, at the city and county of Los Angeles, in said district, by Frederick Billings and others, assignees of the heirs-at-law of Bezar Simmons, deceased, praying the court to review the decision of the U. S. land commissioners rejecting their claim to a tract of land called "the island or peninsula of the port of San Diego," and that you are required to appear at said court, in said city, within ten days after the service hereof, if served on you within the county of Los Angeles, and within twenty days if served on you in the county of San Diego or San Bernardino, and within forty days if served on you in any other county of said State, exclusive of the day of service, and answer said petition, or the petitioner will apply to the court for the relief demanded therein.

In witness whereof, I have hereunto set my hand and affixed the [SEAL] seal of said court, at the city of Los Angeles, this 15th day of December, A. D. 1855.

C. E. CARR, *Clerk.*

58 Received Dec'r 17th, 1855.
EDWARD HUNTER, *U. S. Marshal*,
P'r M. L. GOODMAN, *Deputy.*

I served this summons, together with a certified copy of the petition, upon P. Ord, U. S. attorney for south. dist. of Cal'a, by delivering to him personally a true copy of the same, at Los Angeles,

in the southern district of California, on the 26th day of Dec., A. D. 1855.

EDWARD HUNTER, *U. S. Marshal*,
P'r M. L. GOODMAN, *Dep'ty.*

Sworn and subscribed before me 26 December, 1855.

C. E. CARR, *Cl'k*,
By O MORGAN, *Dep'ty.*

59 *Answer.*

In the district court of the United States for the southern district of California—Hon. Isaac S. K. Ogier, judge.

FREDERICK BILLINGS *et als.*, assignees of BEZAR SIMMONS, appellants, *vs.* THE UNITED STATES, appellees.	No. 257.—Transcript No. 188.

The answer of Pacificus Ord, attorney of the United States for the southern district of California, for and in behalf of the United States, to the petition of Frederick Billing, James R. Bolton, and Henry W. Halleck, assignees of Bezar Simmons, and of Orrin Simmons, Henry Simmons, Nathan R. Simmons, Benjamin F. Simmons, Priscilla Simmons, Ann S. Ryder, and Augusta S. Bartholemew, heirs-at-law of Bezar Simmons, deceased, for a rehearing of this case, and that the decision of the commissioners appointed under the act of Congress of 3d March, 1851, to examine claims to land in California, be reversed and annulled, and their claim to the island or peninsula of the port of San Diego be confirmed, says that he denies all and singular each and every allegation in said petition contained; and further this respondent denies generally the validity of the alleged title of the claimants to the said land claimed by them; and further this respondent denies that the said Billings, Bolton, and Halleck are the assignees of said alleged heirs-at-law of said Simmons, deceased.

And the said respondent prays that the hon'l court will affirm the decision of the said commissioners in said case, and decree the said alleged title for said land to be invalid, and for general relief.

60 P. ORD,
Attorney of the United States for the Southern District of California.

Filed Jan'y 4th, 1856.

C. E. CARR, *Cl'k.*

61 *No.* 259.—*Order to the transmit record to the land com'rs.*

In the United States district court for the southern district of California.

FRED. BILLINGS *et als.*, assignees of Bezar Simmons, *vs.* THE UNITED STATES.	Appeal by claimants, No. 188, in the land commission.

In this case, it being suggested by counsel for claimant that the transcript of the record from the land commission is imperfect, it is

ordered by the court, the district attorney being notified and consenting thereto, that the original transcript be returned to the office of the clerk of the commissioners by the clerk of this court, that said transcript may be amended, or that a perfect copy of the original documents may be transmitted to this court.

Filed Sept. 26th, 1855.

C. E. CARR, *Cl'k.*

62

63 *No.* 257.—*Stipulation.*

In the United States district court for the southern district of California.

FRDERICK BILLINGS *et als.*, assignees of BEZAR SIMMONS, *vs.* THE UNITED STATES. } Appeal by claimants, No. 188, in the land commission.

In this case, it having been ordered by the court that the transcript be returned by the clerk of this court to the clerk of the land commission, in order that the same may be amended, it is hereby stipulated and agreed that no right of the United States, or of the claimant, is to be effected by said order in any respect.

Los Angeles, Sept. 25th, 1855.

P ORD,
U. S. Dis't Att'y.

HALLECK, PEACHY & BILLINGS,
And STANLEY & KING,
For Claimants.

Filed Sept. 26th, 1855.

C. E. CARR, *Cl'k,*
By JNO. W. ROSS, *Dep'ty.*

64

65 *Deposition of Ch's R. Johnson.*

FREDERICK BILLINGS *et als.*, app'l'ts, *vs.* THE UNITED STATES, appellees. } No 257.

Deposition of Charles R. Johnson, taken before C. Sims, United States commissioner for the district of California, at the United States court-house in the city of Los Angeles, on Friday, the 9th day of January, A. D 1857, at 10 o'clock a. m., by consent and agreement of parties, to be used in testimony on behalf of the claimants in a certain cause now pending in the U.S. district court for the southern district California, being case No. 257 on the docket of said court, wherein the United States are appellees and Frederick Billings *et als.* are appellants.

Present: P. Ord, U. S. att'y, for and on behalf of the United States, and F. Billings, on behalf of appellants.

Charles R. Johnson, being duly sworn on the part of appellants, deposes and says, as follows:

Ques. What is your name, age, and place of residence?

Ans. My name is Charles R. Johnson; age, 29 years, place of residence in Los Angeles county.

Ques. Do you know the place called the island or peninsula of San Diego; if yea, how long have you known it, and what do you know of any occupation thereof, or any improvement thereon?

66 Ans. I know it well; have known it since 1849. There were two houses built thereon in the latter part of 1850 or first part of 1851, by myself, at the instance of William H. Aspinwall, of New York.

Quest. Did Mr. Aspinwall have those houses built under the grant presented in this case; in other words, did he represent the claimants in this case, and act for them?

Ans. He did, for he had purchased a certain interest in the island under the grant, which interest he now has; and he acted, in making the improvements, for all the persons interested in the grant.

CHAS. R. JOHNSON.

Sworn and subscribed to before me this 9th day of January, 1857.

C. SIMS, *U. S. Com'r.*

UNITED STATES OF AMERICA,
State of California, County of Los Angelos:

I, C. Sims, United States commissioner for the district of California, hereby certify that the foregoing deposition of Charles R. Johnson was taken before me in accordance with the request and agreement of said attorneys, at the United States court-house, in the

67 city of Los Angeles, State of California; that the said Charles R. Johnson was by me duly sworn, according to law, as a witness in said cause in the caption of this deposition mentioned; and after having so sworn, his testimony was by me reduced to writing in his presence and that of the said attorneys, and after having been by me carefully read to him, and by him corrected, was by him signed in my presence.

In testimony whereof, I hereto set my hand and affix my private seal (having no private seal of the office) this 9th day of January, A. D. 1857.

[SEAL.]

COLUMBUS SIMS,
U. S. Commissioner, South. Dist. Cal'a.

Filed this 9th Jan'y, 1857.

C. SIMS, *Cl'k,*
Pr. J. H. COLEMAN, *Deputy.*

68 *Decision.*

United States dist. court, south'n dist. Cal'a, December term, A. D. 1856.

FREDERICK BILLINGS *et al.*, appellants,
vs.
THE UNITED STATES, appellees. } No. 257.

JANUARY 9TH, A. D. 1857.

Now, on this day, this cause coming on to be heard, the parties appearing by their respective attorneys, the appellants by Halleck, Peachy & Billings, esq's, their attorneys, and the appellees by P. Ord, U. S. dist. att'y, and after argument of counsel aforesaid, is submitted to the court for final adjudication.

Whereupon the court, being fully advised in the premises, delivered its opinion, confirming the claim of the appellants; and a decree was ordered to be entered up according to said opinion.

69 *Decree.*

In the district court of the United States within and for the southern district of California, Hon. Isaac S. K. Ogier, Judge:

THE UNITED STATES, appellees,
vs.
FREDERICK BILLINGS AND OTHERS, appellants. } No. 257.—December term, 1856.

Transcript from the board of land commissioners.—No. 188.

This case coming on to be heard, on appeal from the decision of the board of land commissioners to ascertain and settle private land claims in California, upon a transcript of the proceedings and decision of said board, and the papers and evidence upon which said decision was founded, and also upon other evidence taken and filed in this court, and counsel for the respective parties having been heard:

It is ordered, adjudged, and decreed that the decision of said board of land commissioners rejecting the claim of the appellants, Frederick Billings and others, be, and the same is hereby, reversed.

And it is further ordered, adjudged, and decreed that the title of the appellants, Frederick Billings and others, to the land claimed by them as set forth and described in their petition to the said board of commissioners, and the documentary and other evidence in this case,

70 is a good and valid title, and that their claim to the said land be, and the same is hereby, confirmed.

The land of which confirmation is hereby made is in quantity two square leagues and no more, is known by the name of the "island or peninsula of San Diego," is situated in the county of San Diego, and is bounded on the north by the estero or the port of San Diego, towards the town; east by the end of the rancho of San Augustin Melijo; south by the sea; and west by the anchorage for ships, according to the documents of title, and map to which reference is had If the quantity within said boundaries is less than two square leagues, then the confirmation hereby made is for the whole tract;

but if the quantity within said boundaries exceeds two square leagues, then the confirmation hereby made is made for two square leagues and no more.

ISAAC S. K. OGIER,
U. S. Dist. Judge for the south. dist. of Cal'a.

Filed Jan'y 12th, 1857.

C. SIMS, *Clerk.*

71 *Appeal.*

U. S. dist. court, south'n dist. Cal., December term, A. D. 1856.

FREDERICK BILLINGS *et al.*, appell's,
vs.
THE UNITED STATES, appell't
} No. 257.

FEBRUARY 24TH, 1857.

On motion of P. Ord. U. S. dist. attorney, it is ordered that an appeal be allowed the United States in this case.

72 *New Appeal.*

United States district court, south'n dist. Cala., December term, A. D. 1861.

FREDERICK BILLINGS, *et al.*, appellees,
vs.
THE UNITED STATES, appell'ts.
} No. 257.—Trans. No. 188.

"Island or Pen'a at port of San Diego."

DECEMBER 9TH, A. D. 1861.

And now comes J. R. Gitchel, esq., appointed at the request of the court, and moves the court that a new appeal be allowed the U. S. in this case to the Supreme Court of the U. S. from the order and decree of this court heretofore rendered.

Which motion being heard, and by the court understood, is granted.

73 United States district court, south'n district of California.

CLERKS OFFICE, *Monterey, Cal'a.*

I, John O. Wheeler, clerk of the United States district court for the southern district of California, do hereby certify the foregoing seventy-two pages, numbered from 1 to 72, both inclusive, to contain a full, true, and correct transcript of the record of the proceedings and of the decision of said court, of the documentary evidence, and of the testimony of the witnesses, upon which the same is founded, on file in this office in case No. 257 on the docket of the said court, wherein Frederick Billings *et al.*, assignees of Bezar Simmons, are the claimants against the United States for the place known by the name of "Island or Peninsala at the port of San Diego."

In testimony whereof, I hereunto set my hand and affix the seal of said court, at Monterey, Cal'a, this the 15th day of April, A. D. 1862.

[L. S.]

JOHN O. WHEELER,
Cl'k U. S. Dist. Court, S'n Dist. Cal'a.

Filed Sept. 20th, 1862